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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of Part 90 of the)	PR Docket No. 93-144
Commission's Rules to Facilitate)	
Future Development of SMR)	
Systems in the 800 MHz)	
Frequency Band)	
)	
Implementation of Sections 3(n))	GEN Docket No. 93-252
and 332 of the Communications Act)	
Regulatory Treatment of)	
Mobile Services)	
)	
Implementation of Section 309(j))	PP Docket No. 93-253
of the Communications Act --)	
Competitive Bidding)	
)	
To: The Commission		

**PETITION FOR RECONSIDERATION OF
CONSUMERS POWER COMPANY**

Consumers Power Company ("Consumers"), by its attorneys and pursuant to Section 1.106 of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission"), hereby submits this Petition for Reconsideration of the Commission's First Report and Order ("First R&O") released in the above-captioned proceeding.^{1/}

^{1/} First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, FCC 95-501, released December 15, 1995. A summary of the First R&O, as well as the text of the promulgated rules, were published in the Federal Register on February 16, 1996, at 61 Fed. Reg. 6138.

Preliminary Statement

1. Consumers is the largest energy utility in the state of Michigan. It provides electric power and/or natural gas to the 68 counties on Michigan's lower peninsula. Consumers' operating territory stretches from Detroit in the southeast portion of the state, to Dowagiac in the southwest, and to Cheboygan in the north, an area totaling approximately 31,000 square miles. Within this expanse, Consumers serves over 2,300,000 people.

2. To better serve its customers in a safe, dependable and efficient manner, Consumers is in the multi-year process of licensing and constructing an 800 MHz land mobile radio system throughout its entire service territory. As an eligible in the Power Radio Service, Consumers primarily employs Industrial/Land Transportation category channels, as well as frequencies obtained from other non-commercial categories through intercategory sharing provisions. Consumers designed this wide-area system to meet its increasing communications requirements and to handle its extensive customer service dispatch operations. Once completed, the system will have over 3,200 mobile, portable, and control units, and over 60 base station sites.

3. Consumers uses its land mobile radio system to enable its work crews to communicate with the company's

headquarters when they are out in the field responding to power outages, gas leaks, service requests and related troubles. In this regard, the ability of Consumers' employees to communicate at all times is essential in light of their frequent work with extremely high voltage wires, high pressure gas mains, and other features of Consumers' operational infrastructure. Additionally, the ability of Consumers' crews to respond quickly and efficiently to power outages is vital to Consumers' customers, especially to airports, public safety agencies (e.g., police and fire services), hospitals and other emergency health care providers which depend on life support systems and emergency response equipment.

4. As a licensee on 800 MHz spectrum in Michigan, Consumers is heavily impacted by the rules resulting from the Commission's international border area channel classification framework, which was established in 1982.^{2/} Specifically, Canadian border regions 3 and 7 transect Consumers' wide-area 800 MHz system. Hence, as a whole, Consumers is authorized for a mix of border area and non-border area channels. Since border region channel allocations were made by the Commission without reference to "regular" or non-border area commercial and non-commercial

^{2/}

See 47 C.F.R. § 90.619.

categories, Consumers has a particularly strong interest in this proceeding. Simply put, there are no General Category channels in the Canadian border areas encompassing Regions 3 and 7, and channels from the upper 10 MHz block (allocated to the SMR category in non-border areas) are allocated for non-commercial assignments in Regions 3 and 7.^{3/}

5. Consumers participated earlier in the Second Further Notice of Proposed Rule Making portion of this proceeding, filing Comments addressing the use of General Category and "lower 80" SMR category channels in border areas. Consumers also addressed the question of whether non-SMR category incumbents should be subject to mandatory relocation.

Petition for Reconsideration

6. In the First Report and Order, the Commission, among other things, (1) designates the upper 10 MHz block of 800 MHz spectrum for licensing on an "Economic Area" (EA) basis, (2) grants EA licensees the right to relocate incumbents within their spectrum blocks, and (3) reallocates

^{3/} Specifically, channels from among those numbered 401 through 600, corresponding to the upper 10 MHz block of 800 MHz channels, are assigned to the Business category in Regions 3 and 7. Pursuant to the Commission's intercategory sharing provisions, Consumers is authorized to employ in several border region stations channels from the Business category that fall in the upper 10 MHz block.

the 150 channels in the General Category to the 800 MHz Specialized Mobile Radio (SMR) category.

7. As set forth below, Consumers urges that the rules promulgated in the First R&O be revised to: (1) clarify that upper 10 MHz block channels in border areas that are not assigned to the SMR category are not subject to wide-area EA licensing and mandatory relocation; (2) emphasize that full co-primary protection must be afforded by non-border area EA licensees to border area, co-channel, non-commercial licensees; and (3) overturn the Commission's determination to reallocate the General Category channels to the SMR category.

8. The focus of this Petition is on decisions reached by the Commission in the First R&O setting forth EA service and licensing rules and reallocation matters, not on the Commission's chosen auction methodology for wide area SMR licensing as promulgated in the Eighth Report and Order ("Eighth R&O") portion of this proceeding. However, Consumers respectfully submits that competitive bidding introduces the opportunity for EA applicants and auction bidders to misunderstand the true availability of SMR category channels in border areas, such as Regions 3 and 7. Further, Consumers is concerned that EA auction winners may not focus on their responsibilities to provide adequate co-

channel protection to the operations of non-SMR licensees, such as Consumers, who employ upper 10 MHz block channels in border areas on a non-SMR basis. Simply put, the Commission must clarify that these channels are not available for EA licensing.

9. The First R&O briefly addresses the licensing of EA spectrum blocks derived from the upper 10 MHz block in border areas, stating that EA licensees would be entitled to use any available border area channels, subject to the rules regarding international assignment. The Commission declines to distinguish between border and non-border areas for licensing purposes, "[a]lthough we recognize that some 800 MHz SMR channels will not be available in border areas, or may suffer from significant restrictions on power or antenna height. . .".^{4/}

10. Consumers respectfully requests that the Commission in auctioning upper 10 MHz block spectrum for EA licensing in the Canadian border area specifically consider that, pursuant to the Commission's 1982 rules establishing Canadian border area assignments, upper 10 MHz block channels are often assigned to non-SMR categories, like the Business category in Regions 3 and 7. In turn, these

^{4/}

First R&O, ¶ 48.

Business category channels are employed by Consumers, pursuant to intercategory sharing provisions, in the company's wide area Industrial/Land Transportation category system covering both border and non-border areas. Accordingly, the Commission should strongly clarify that auction and licensing procedures do not apply to these channels in the border regions.

11. These clarifications are particularly critical since the First R&O grants EA licensees the right to relocate both SMR and non-SMR incumbent systems, ultimately on a mandatory basis. In the absence of a clarification of the status of border area channels, EA licensees may be under the misunderstanding that Consumers' operations in border regions are subject to mandatory relocation. EA 57 (Detroit) and EA 58 (Northern Michigan) comprise most of Regions 3 and 7. Entrepreneurial licensees need to be clearly apprised about the non-standard channel configurations in border areas, and that Consumers is not subject to relocation; the channels at issue are not SMR.

12. In a similar manner, co-channel separation issues have an increased importance to Consumers. Several upper 10 MHz band channels that will be auctioned and licensed in non-border areas will be co-channel with Consumers' wide-area system. An upper 10 MHz block channel located near a

regional boundary may impact Consumers' co-channel Industrial/Land Transportation operation. Accordingly, we urge the Commission to emphasize that full primary co-channel protection pursuant to the standards of Section 90.621(b) must be afforded by non-border area EA auction winners to co-channel Industrial/Land Transportation category licensees.

13. Finally, Consumers believes that the Commission's determination to reallocate the General Category channels to the SMR category is an insupportable abdication of the Commission's responsibility to provide for the mobile communications requirements of internal use, private mobile radio systems. Simply put, the Commission's 1975 allocation in Docket No. 18262 of 600 channel pairs in the 800 MHz band for the private land mobile radio services has been eroded over the past 21 years to an allocation of only 100 channels for non-Public Safety private land mobile radio systems.

14. The Commission seeks to justify the reallocation of the General Category to the SMR Service on the basis of the sheer number of SMR licensees in that category, as if this were a natural, evolutionary process. To the contrary, the overwhelming SMR presence is a sad result of the Commission's SMR licensing freeze of August 10, 1994, after which the General Category inevitably received the brunt of

SMR licensing. Nonetheless, the Commission must be mindful of the fact that approximately 3,500 non-commercial licensees, such as Consumers, operate systems in the General Category pool.^{5/}

15. Consumers' private land mobile radio system is a highly specialized, spectrum-efficient network that makes intensive re-use of authorized channels over a huge area. By its location in a border region, Consumers employs General Category channels assigned to non-commercial border region categories. Hence, Consumers' intensive re-use of these General Category channels in non-border areas is all the more critical. The Commission's decision to reallocate General Category channels to the SMR service essentially strips Consumers of its ability to expand its wide area system to meet electric utility telecommunication expansion requirements.

16. Rather than reallocate this category, the Commission should rededicate itself to the principles that underlie the General Category. After considerable deliberation in the Docket No. 87-213 proceeding, the General Category was recast as a pool of channels that could meet the expansion requirements of bona-fide private systems

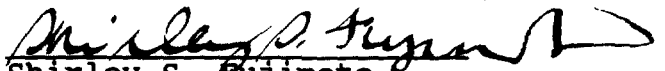
^{5/} Industrial Telecommunications Association, Comments, pp. 5-6.

where spectrum in the user's primary category was exhausted. Failure to reverse the First R&O reallocation decision in light of this original goal would amount to a final, irreconcilable, and irreversible blow to the accessibility of the General Category by non-commercial systems.

WHEREFORE, THE PREMISES CONSIDERED, Consumers Power Company urges the Commission to revise the rules promulgated in the First R&O as specified herein.

Respectfully submitted,

CONSUMERS POWER COMPANY

By: 
Shirley S. Fujimoto
Barry J. Ohlson
McDermott, Will & Emery
1850 K Street, N.W.
Suite 500
Washington, D.C. 20006
(202) 887-8000

Its Attorneys

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